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No. 14-9496

In the
Supreme Court of the United States

ELIJAH MANUEL,

PETITIONER,

v.

CITY OF JOLIET, ILLINOIS, ET AL.,

RESPONDENTS.

On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

BRIEF FOR THE STATES OF ILLINOIS, COLORADO, HAWAII, KANSAS, MISSISSIPPI, MISSOURI, OHIO, SOUTH CAROLINA, AND THE DISTRICT OF COLUMBIA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether an individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process so as to allow a malicious prosecution claim based upon the Fourth Amendment.

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INTEREST OF THE *AMICI CURIAE*

Illinois and eight States submit this brief in support of Respondents to urge affirmance of the judgment of the United States Court of Appeals for the Seventh Circuit in *Manuel v. City of Joliet, Ill..*, 590 Fed App'x 641 (7th Cir. 2015). Petitioner asks this Court to declare that a very specific version of a malicious prosecution claim is housed in the Fourth Amendment and thus can be brought under § 1983. But, as the Seventh Circuit below recognized, the Fourth Amendment is not a proper fit for such a claim. A malicious prosecution claim, by its nature, is focused on a prosecution, which is outside the ambit of the Fourth Amendment.

Whatever label Petitioner asks this Court to attach to his new constitutional tort, it is an indispensable element to him that the tort accrues upon the successful termination of his prosecution (for otherwise his particular claim would be time barred). This highlights that the focus of Petitioner's claim is on the prosecution and use of the legal process and therefore underscores the fact that the Fourth Amendment is not the proper home for his claim. Moreover, malicious prosecution, by definition, requires a finding of malice. But such a subjective inquiry has no place in Fourth Amendment jurisprudence.

The *Amici* States have three important interests implicated by this case. First, this case presents the question of the proper standards by which to hold law

enforcement officers accountable for unauthorized torts committed during the investigation and prosecution of criminal activity. The *Amici* States are interested in this question because they have law enforcement agencies whose sworn officers participate in the investigation and prosecution of tens of thousands of cases per year. Indeed, at the time of the most recent census, the primary state law enforcement agencies alone employed over 60,000 sworn personnel. U.S. Dep't of Justice, *Census of State and Local Law Enforcement Agencies* 7 (2008). The States, then, have a strong interest in the federal constitutional standards governing the conduct of these many state employees.

Second, the *Amici* States have an interest in developing and applying their own remedies for malicious prosecution claims. Such claims invoke historically local concerns within the traditional province of the States—the conduct of officers exercising local police power and the potential abuse of local judicial processes. And the malicious prosecution tort involves a delicate balancing of interests between an individual's right to recover for abuse of process and the compelling government interest in not chilling law enforcement officers in the exercise of their duties. As this Court recognized in *Parratt v. Taylor*, 451 U.S. 527 (1981), where the question is whether an individual has been denied process by the unauthorized, unpredictable action of a state officer, the court should determine whether the process the State provides is sufficient to remedy any harms, and if so there is no due process

claim. This focus first on the adequacy of state-provided remedies dignifies local responses to local concerns.

And third, the *Amici* States have a strong interest in swiftly uncovering and timely addressing unauthorized conduct by their state law enforcement officials as well as by local law enforcement officials within the State. By their nature, these unauthorized actions are often difficult to detect. The claim as Petitioner insists on presenting it, however, undermines the important societal interest in quickly addressing misconduct because waiting until the successful termination of the prosecution to bring the § 1983 action could take years.

SUMMARY OF ARGUMENT

This Court should reject Petitioner's invitation to declare that a § 1983 malicious prosecution claim can be grounded in the Fourth Amendment. The Fourth Amendment is concerned with searches and seizures, not alleged abuses of legal proceedings. Rather, when process in the course of a prosecution allegedly has been abused, due process principles come into play.

Moreover, the malicious prosecution tort is comprised of elements that reflect a difficult balance that acknowledges the competing interests at stake. While the law recognizes that injuries should be redressed, it also recognizes that malicious prosecution lawsuits could damage the public interest by chilling law enforcement. But any effort to squeeze a malicious prosecution claim into the Fourth Amendment would require abandonment of the traditional elements of the claim, thus upsetting the delicate balancing of those interests. For instance, as its name suggests, malice is an essential element of a malicious prosecution. But the Fourth Amendment does not permit the subjective inquiry necessary to analyze a defendant's state of mind because that Amendment's focus is on the objective reasonableness of searches and seizures.

Because the Due Process Clause is the better fit for any § 1983 malicious prosecution claim, *Parratt v. Taylor* instructs that the Court should look to state law to determine whether the State offers an adequate postdeprivation remedy, most often in the form of a

malicious prosecution tort action. If that remedy is adequate, then no § 1983 action is available. But if the state remedy is not adequate, then the Due Process clause provides a constitutional backstop. This focus on the adequacy of postdeprivation process in cases involving the random and unauthorized acts of officers is consistent with the standard due process analysis set forth in *Mathews v. Eldridge*. And this framework serves the Court's interest in observing the line between traditional torts and constitutional claims. Moreover, with the focus first on the adequacy of state remedies, this analysis gives effect to the State's strong interests in providing remedies to redress abuses of legal proceedings, which is something well within the States' traditional province.

ARGUMENT

I. Any Constitutional Claim For Malicious Prosecution Is Located Only In The Due Process Clause.

The Due Process Clause, rather than the Fourth Amendment's protection against unreasonable seizures, is the proper constitutional source for a malicious prosecution claim.

A. The Fourth Amendment is an improper fit for a malicious prosecution claim.

This Court has made clear that the Fourth Amendment is concerned with searches and seizures, and not with prosecutions. *See Gerstein v. Pugh*, 420 U.S. 103, 119 (1975) (explaining that, in the Fourth Amendment context, "we do not imply that the accused is entitled to judicial oversight or review of the decision to prosecute"). Indeed, this Court has recognized that the nature of an individual's injury from detention without legal process is "entirely distinct" from the injury caused by wrongful institution or ongoing prosecution of legal proceedings. *Wallace v. Kato*, 549 U.S. 384, 389-90 (2007). And tort law bears out this distinction: "Typically, a warrantless deprivation of liberty from the moment of arrest to the time of arraignment will find its analog in the tort of false arrest, while the tort of malicious prosecution will

implicate postarraignment deprivations of liberty." 54 C.J.S. Malicious Prosecution, § 4.

Thus, the Fourth Amendment is concerned with injuries or deprivations prior to the institution of legal process, while the Due Process Clause is concerned with deprivations caused by inadequacies in or abuse of the prosecution once instituted. *See Cordova v. City of Albuquerque*, 816 F.3d 645, 663 (10th Cir. 2016) (Gorsuch, J., concurring in the judgment) (explaining that this Court treats "the post-arraignment, pre-trial detention process as the province of the Fifth and Fourteenth—and not the Fourth—Amendment").

In addition, when it comes to searches and seizures, "reasonableness is always the touchstone of Fourth Amendment analysis." *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2186 (2016). The test under the Fourth Amendment asks "whether 'the circumstances, *viewed objectively*, justify the challenged action.'" *Ashcroft v. al-Kidd*, 563 U.S. 731, 736 (2011) (quoting *Scott v. United States*, 436 U.S. 128, 138 (1978)) (emphasis added and internal brackets removed).

This objective inquiry is inconsistent with an action for malicious prosecution. The elements of a common law malicious prosecution tort claim reflect the balance between the competing "individual interest in freedom from unjustifiable litigation and the social interest in supporting resort to law." W. Keeton, et al., *Prosser & Keeton on Torts* § 119, at 871 (5th ed. 1984);

see Hunt v. Lawson, 2008 WL 4691052, *5 (Ky. Oct. 23, 2008); *see also Ims v. Town of Portsmouth*, 32 A.3d 914, 922 (R.I. 2011) (malicious prosecution actions "tend[ ] to deter the prosecution of crimes and/or chill free access to the courts") (internal quotation marks omitted). "These interests are balanced by carefully defining the elements of an action for malicious prosecution, and the balance is maintained by strictly adhering to these elements." *Browning-Ferris Indus., Inc. v. Lieck*, 881 S.W.2d 288, 291 (Tex. 1994). Therefore, "[e]ven a small departure from the exact prerequisites for liability may threaten the delicate balance between protecting against wrongful prosecution and encouraging reporting of criminal conduct." *Id.*; *see also Hunt*, 2008 WL 4691052, at *5.

The elements of the malicious prosecution tort include "'[m]alice,' or a primary purpose other than that of bringing an offender to justice."[1] W. Keeton et al., at 871. To evaluate the malice requirement, the court must determine why an individual initiated the underlying proceeding. Thus, the court engages in a subjective inquiry into the defendant's state of mind, not an objective inquiry into the reasonableness of

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[1] The traditional elements of a common law malicious prosecution tort are that a criminal proceeding was instituted by the defendant against the plaintiff, the proceeding terminated in the plaintiff's favor, there was no probable cause for the proceeding, and the defendant had malice or an improper purpose in bringing the proceeding. W. Keeton et al., at 871.

defendant's conduct. *See* Restatement of Torts (Second) § 668 cmt. c; *see also, e.g.*, *Soukup v. Law Offices of Herbert Hafif*, 139 P.3d 260, 292 (Cal. 2006) ("The 'malice' element relates to the *subjective intent or purpose* with which the defendant acted in initiating the prior action.") (internal quotation marks and ellipsis omitted, emphasis in original); *Miles v. Paul Moak of Ridgeland, Inc.*, 113 So. 3d 580, 586 (Miss. Ct. App. 2012) ("Unlike probable cause, the malice inquiry focuses primarily on the defendant's subjective state of mind at the time he filed the criminal action.").

The subjective inquiry into the defendant's actual state of mind in a malicious prosecution case stands in sharp contrast to the objective reasonableness inquiry that is a hallmark of Fourth Amendment-based torts. For a malicious prosecution claim, for example, if the person initiating a criminal prosecution does not believe in the guilt of the accused, he does not have a proper purpose "even though the facts within his knowledge or the information in his possession are such as might lead a reasonable man to believe that the accused had committed the offense charged against him." Restatement of Torts (Second) § 668 cmt. e. In the Fourth Amendment context, however, a plaintiff cannot prevail in a § 1983 suit unless the officer was objectively unreasonable regardless of any malicious intent. *See Graham v. Connor*, 490 U.S. 386, 397 (1989); *see also Tyree v. U.S.*, 417 Fed. App'x 364, 366 (4th Cir. 2011) (explaining that "the probable cause determination is an objective one" but "discovery into the officer's

subjective state of mind may have relevance to the malice element of her malicious prosecution claim"); *Roberts v. Fed. Exp. Corp.*, 842 S.W.3d 246, 248 (Tenn. 1992) ("Whereas malice concerns the subjective mental state of the prosecutor, appraisal of probable cause necessitates an objective determination of the reasonableness of the prosecutor's conduct in light of the surrounding facts and circumstances.").[2]

In sum, the malicious prosecution tort's focus on legal processes and its subjective component rule out the Fourth Amendment as the basis of a constitutional malicious prosecution claim.

B. The Due Process Clause is a better fit for a malicious prosecution claim.

Rather than the Fourth Amendment, with its focus on searches and seizures as opposed to prosecutions, the proper basis for a constitutional claim that a prosecution was improper is the Due Process Clause. A malicious prosecution claim asserts that the judicial *process* or legal *procedure* has been misused. *See* Keeton et al., at 870-71. It requires the institution of a "proceeding." *Id.*; *see* Dan B. Dobbs, *The Law of Torts* § 431 at 1216-18 (2000). Because the Due Process Clause "is concerned with the substantial fairness of

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[2] Additionally, as Respondents explain, the favorable termination element of the malicious prosecution tort cannot be accommodated by the Fourth Amendment. *See* Resp. Br. at 20-24.

legal procedures," *Allen v. U.S. Fid. & Guar. Co.*, 342 F.2d 951, 956 (9th Cir. 1965), a claim focused on the impropriety or inadequacy of procedures is grounded in that Clause, *see Baker v. McCollan*, 443 U.S. 137, 142 (1979). Under the procedural due process analysis, "our precedents make clear that a state actor's random and unauthorized deprivation of that interest cannot be challenged under 42 U.S.C. § 1983 so long as the State provides an adequate postdeprivation remedy." *Albright v. Oliver*, 510 U.S. 266, 284 (1994) (Kennedy, J., concurring in judgment) (citing *Parratt v. Taylor*, 451 U.S. 527, 535-44 (1981); *Hudson v. Palmer*, 468 U.S. 517, 531-36 (1984); *Ingraham v. Wright*, 430 U.S. 651, 674-82 (1977)).

1. *Parratt* and its progeny establish that a due process claim alleging random and unauthorized acts cannot survive so long as there is adequate post-deprivation process.

Petitioner's malicious prosecution claim fits well within the principle of *Parratt v. Taylor*. In *Parratt*, an inmate of a Nebraska state prison sued prison officials under § 1983 because some of his property was lost when the officials failed to follow the prison's procedure for handling inmate mail. 451 U.S. at 530-31. The Court noted that the inmate's claim met three prerequisites of a valid due process claim because prison officials acting under color of state law had deprived him of his property. *Id.* at 536-37. But that was insufficient to bring a § 1983 claim because the Due Process Clause

"protects only against deprivations without due process of law." *Id.* at 537 (internal quotation marks omitted). The inmate's loss of property did not occur as the result an established state procedure, but rather as the result of the unauthorized failure of state agents to follow official procedure. *Id.* at 543. In those circumstances, it was impracticable for the State to provide a predeprivation remedy. *Id.* Therefore, because the inquiry "must focus on whether the respondent has suffered a deprivation of property without due process of law," the Court was required to determine "whether the tort remedies which the State of Nebraska provides as a means of redress for property deprivations satisfy the requirements of procedural due process." *Id.* at 537.

This Court subsequently extended *Parratt* from unauthorized negligent conduct to intentional deprivations of property in *Hudson*, 468 U.S. at 533. The Court explained that a State "can no more anticipate and control in advance the random and unauthorized intentional conduct of its employees than it can anticipate similar negligent conduct." *Id.* Thus, "an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause" if "a meaningful postdeprivation remedy for the loss is available." *Id.* That is because "the state's action is not complete until and unless it provides or refuses to provide a suitable postdeprivation remedy." *Id.* Then, in *Zinermon v. Burch*, 494 U.S. 113, 132 (1990), this Court extended *Parratt* to intentional deprivations of

liberty. *See also Betterman v. Montana*, 136 S. Ct. 1609, 1618-19 (2016) (Thomas, J., concurring) ("The Due Process Clause can be satisfied where a State has adequate procedures to redress an improper deprivation of liberty or property.") (citing *Parratt*, 451 U.S. at 537).

The jurisprudential pillars upon which the *Parratt* rule rests are strong. First, *Parratt* acknowledges the Court's role in interpreting the Constitution, but also "reflects [the Court's] continuing reluctance to treat the Fourteenth Amendment as 'a font of tort law.'" *Town of Castle Rock, Colo. v. Gonzalez*, 545 U.S. 748, 768-69 (2005) (quoting *Parratt*, 451 U.S. at 544, in turn quoting *Paul v. Davis*, 424 U.S. 693, 701 (1976)). Pursuant to this limiting principle, the Court recognizes that the Constitution "does not purport to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society." *Daniels v. Williams*, 474 U.S. 327, 332 (1986). Accordingly, the Court has "previously rejected claims that the Due Process Clause should be interpreted to impose federal duties that are analogous to those traditionally imposed by state tort law." *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 128 (1992); *see Baker*, 443 U.S. at 146 (explaining difference between § 1983 remedies for constitutional violations and state remedies under traditional tort-law principles). In warning against constitutionalizing common law torts, this Court has explained that "[i]t is no reflection on either the breadth of the United States Constitution or the importance of traditional tort law to say that they

do not address the same concerns." *Daniels*, 474 U.S. at 333.

Second, *Parratt* is consistent with the test, set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine what procedures are constitutionally required. Under *Mathews*, the process due in a given circumstance is determined by weighing the private interest affected, the risk of an erroneous deprivation of such interest through the procedures used and the value of additional or other procedures, and the government's interest, including the burdens that other procedures would entail. *Id.* at 335. In cases within the scope of the *Parratt* rule, involving random and unauthorized deprivations by state employees, "the State cannot possibly provide a meaningful predeprivation hearing, and therefore adequate postdeprivation state remedies may satisfy the procedural requirements of the Due Process Clause." *Gregory v. Town of Pittsfield*, 470 U.S. 1018, 1022 (1985). *Parratt* "represent[s] a special case of the general *Mathews v. Eldridge* analysis, in which postdeprivation tort remedies are all the process that is due, simply because they are the only remedies the State could be expected to provide." *Zinermon*, 494 U.S. at 128; *see id.* at 129 (*Parratt* is an application of *Mathews* in "the unusual case in which one of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue").

Third, as Justice Kennedy recognized in *Albright*, *Parratt* "respects the delicate balance between state and federal courts and comports with the design of § 1983, a statute that reinforces a legal tradition in which protection for persons and their rights is afforded by the common law and the laws of the States, as well as by the Constitution." 510 U.S. at 284 (Kennedy, J., concurring in the judgment). *Parratt* thus embraces notions of comity and federalism that lie at the heart of our nation's judicial system. *See Cordova*, 816 F.3d at 664-65 (Gorsuch, J., concurring in the judgment) ("[O]ut of respect for considerations of judicial modesty, efficiency, federalism, and comity, the Supreme Court in procedural due process cases generally encourages federal courts to abstain in favor of state common law remedial processes than try to recreate them in the name of the Constitution.").

Respect for this balance, in turn, is consistent with this Court's admonition that States "are free to serve as experimental laboratories" in crafting solutions to deal with local concerns, including law enforcement problems. *Arizona v. Evans*, 514 U.S. 1, 7-8 (1995); *see id.* at 24 (Ginsburg, J., dissenting) (recognizing importance of "States' ability to serve as laboratories for testing solutions to novel legal problems"); *see also Fisher v. Univ. of Tex. at Austin*, 136 S. Ct. 2198, 2214 (2016) (reiterating importance of States serving as "laboratories for experimentation"); *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936, 957 (2016) (Ginsburg, J., dissenting) ("But state-law diversity is a hallmark of our

political system and has been lauded in this Court's opinions."); *Kansas v. Carr*, 136 S. Ct. 633, 646 (2016) (Sotomayor, J., dissenting) (explaining that States should be allowed to serve "as necessary laboratories for experimenting with how best to guarantee defendants a fair trial").

2. Malicious prosecution claims are governed by the *Parratt* rule.

In *Albright*, a plurality of this Court held that there was no substantive due process right "to be free from criminal prosecution except upon probable cause." 510 U.S. at 268 (Rehnquist, J., plurality); *see id.* at 281 (Kennedy, J., concurring in the judgment); *id.* at 286 (Souter, J., concurring in the judgment). The plurality, however, did not address whether a malicious prosecution claim could be brought under the Constitution. But Justice Kennedy, joined by Justice Thomas, concurred in the judgment and explained that the petitioner's "due process claim concerns not his arrest but instead the malicious initiation of a baseless criminal prosecution against him." *Id.* at 281 (Kennedy, J., concurring in judgment). Justice Kennedy noted that a malicious prosecution "can cause unjustified torment and anguish" and assumed *arguendo* that "some of the interests granted historical protection by the common law of torts," such as the interest in freedom from malicious prosecution, "are protected by the Due Process Clause." *Id.* at 283-84.

Emphasizing the "clarity of the *Parratt* rule," Justice Kennedy explained that "[i]n the ordinary case where an injury has been caused not by a state law, policy, or procedure, but by a random and unauthorized act that can be remedied by state law, there is no basis for intervention under § 1983, at least in a suit based on 'the Due Process Clause of the Fourteenth Amendment *simpliciter*.'" *Id.* at 285 (quoting *Parratt*, 451 U.S. at 536). The opinion noted, however, that if the relevant state law did not provide an adequate postdeprivation remedy, then a § 1983 malicious prosecution suit under the Due Process Clause might be proper.[3] *Id.* at 286.

Application of *Parratt* in this context focuses on the adequacy of state remedies—it permits States to craft their own solutions to the problems associated with abuse of the legal process. As discussed, these solutions require a delicate balancing between competing interests including both the desire to redress injuries and the need to avoid chilling law enforcement. As this Court "has long recognized[,] the role of the States as laboratories for devising solutions to difficult legal problems" and the "[d]eference to state lawmaking," such as that afforded by the *Parratt* rule, "allows local policies more sensitive to the diverse needs

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[3] Justice Kennedy also found that "Illinois provides a tort remedy for malicious prosecution" and that "[g]iven the state remedy and the holding of *Parratt*, there is neither need nor legitimacy to invoke § 1983 in this case." *Id.* at 285-86.

of a heterogeneous society, permits innovation and experimentation, enables greater citizen involvement in democratic processes, and makes government more responsive by putting the States in competition for a mobile citizenry." *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2673 (2015).

And States have in fact developed their own responses to the complex legal problem of striking the proper balance between the competing interests at the heart of a malicious prosecution claim. While the elements generally do not differ substantially between them, States nonetheless have crafted their own rules in applying those elements. Thus, for instance, States have devised different rules for what constitutes a favorable termination to bring a malicious prosecution tort claim. Some States require a favorable termination on the merits of the prosecution to satisfy this element, *see, e.g.*, *Miller v. Desoto Reg'l Health Sys.*, 128 So. 3d 649 (La. App. Ct. 2013); *Ellsworth v. City of Gloversville*, 269 A.D.2d 654 (N.Y. App. Ct. 2000), while others find this element satisfied when the termination is indecisive as to the accused's guilt, *see, e.g.*, *Soon Phat L.P v. Alvarado*, 396 S.W.3d 78 (Tx. App. Ct. 2013).

Further, States differ in their treatment of a dismissal of a criminal case on grounds of double jeopardy. *Compare Haefner v. Burkey*, 626 A.2d 519 (Pa. 1993), *with Foshee v. S. Fin. & Thrift Corp.*, 967 S.W.2d 817 (Tn. App. Ct. 1997). And some States have

balanced the competing interests underlying the malicious prosecution tort in a manner that does away with the favorable termination requirement altogether, so that the claim accrues at an earlier date, *see Spencer v. Peters*, 2012 WL 4514417, at *7 (W.D. Wash. Oct. 2, 2012), or else consider favorable termination as part of the inquiry as to whether the prosecution was supported by probable cause, *see Devaney v. Thriftway Mktg. Corp.*, 953 P.2d 277 (N.M. 1997), *overruled on other grounds*, *Durham v. Guest*, 204 P.3d 19 (N.M. 2009).

These differences, though perhaps subtle, demonstrate that States tailor the specifics of their malicious prosecution torts to local practices and understandings as to how cases are criminally prosecuted in their jurisdiction. In this way, States are able to balance the interests underlying a malicious prosecution action, experiment with what works best for them, and tailor their solutions to accord with their particular needs. *Parratt* gives effect to these important interests. Petitioner's approach, on the other hand, would create a national one-size-fits-all cause of action.

But *Parratt* provides a constitutional backstop if the state law remedies are not adequate. *See* 451 U.S. at 543-44. This backstop provides meaningful protection to an individual's rights, as illustrated by the Seventh Circuit's decision in *Julian v. Hanna*, 732 F.3d 842 (7th Cir. 2013). There, Julian, an Indiana resident, brought a § 1983 lawsuit against, among others, three local Indiana police officers, the town that employed two

of the officers, and a county sheriff for malicious prosecution. *Id.* at 844. The Seventh Circuit examined whether Indiana provided an adequate state remedy for malicious prosecution and found that while Indiana recognized that tort, it had a statute that granted absolute immunity to the defendant state officers. *Id.* Although the court acknowledged "the state's interest in limiting officers' liability," *id.* at 848, it found that Indiana "deprives plaintiffs who assert due process claims against state officers of an adequate alternative remedy to a federal suit," *id.* at 846.

Julian illustrates that the concerns raised by the National Police Accountability Project (NPAP) in its *amicus* brief are unfounded. NPAP argues that States will contrive to undermine malicious prosecution tort claims by granting blanket immunity to officers (NPAP Br. at 10-13), placing caps on damages (*id.* at 16-19), and otherwise acting to prevent an individual from obtaining a remedy. But *Parratt* specifically accounts for this by measuring the adequacy of the state remedy.[4]

The *Parratt* principle comfortably fits the facts alleged here. According to Petitioner's amended complaint, the individual officers found pills on Petitioner's person and field tested them. JA64, 69. The officers then lied about the results of the field test.

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[4] NPAP also fails to account for the fact that, under any § 1983 malicious prosecution claim, law enforcement officers may be entitled to qualified immunity. *See Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

JA69. Then, the pills were tested at the police station. JA70. And once again, the officers lied about the test results. JA71. These allegations show that the officers were likely following procedure by testing the pills both on the scene and then at the station. But by disregarding and lying about the test results, they engaged in the type of unauthorized conduct that is well within *Parratt*'s scope.

As discussed, *Mathews* instructs that in determining what process is due, the court is to consider the value and practicability of additional procedures. 424 U.S. at 335. *Parratt* applies in those cases where additional, predeprivation procedures are impossible because the acts of the officers are unauthorized and random. *See Zinermon*, 494 U.S. at 129-30. In *Hudson*, the *Parratt* rule applied to the officers' intentional conduct because, instead of acting pursuant to a state procedure, the officer was "pursuing a random, unauthorized personal vendetta." 468 U.S. at 533. Similarly, here, Petitioner specifically alleged that at least one of the officers was pursuing a vendetta against him. JA62-63. Moreover, postdeprivation process is afforded by Illinois's malicious prosecution tort claim. Under *Parratt*, therefore, petitioner's due process claim must fail.

II. Petitioner's Delayed-Accrual Rule Undermines The States' Interest In Timely Addressing Officer Misconduct.

The rule Petitioner seeks harms the States' interests in monitoring, responding to, and preventing officer misconduct. To avoid the statute of limitations, Petitioner urges this Court to adopt a rule that his new § 1983 cause of action accrued when the proceedings were terminated in his favor. Pet. 21, 25. This favorable termination, however, may occur many years after the initiation of the improper proceedings.

But permitting Petitioner to wait that long before raising a § 1983 claim hinders the States. In *Wallace*, this Court rejected the argument that equitable tolling could delay the accrual of a Fourth Amendment false arrest claim. 549 U.S. at 396-97. In doing so, the Court expressly spurned the contention that "law enforcement officers would prefer the possibility of a later § 1983 suit to the more likely reality of an immediate filing." *Id.* at 397. Rather, the Court pointed out that "no fewer than 11 States have informed us in this litigation" that States and municipalities "have a strong interest in timely notice of alleged misconduct by their agents." *Id.* After all, it is important for States and local governments to correct official abuses when they happen. The earlier they have notice of these abuses, the more effective these governments can be in addressing and correcting problems.

* * *

For these reasons, this Court should decline the invitation to create a Fourth Amendment malicious prosecution tort. Instead, the better fit for claims that legal processes have been abused is the Due Process Clause. This Court should apply the *Parratt* rule in these circumstances, and hold that so long as Illinois's malicious prosecution remedy is adequate, Petitioner may not bring a § 1983 action asserting such a claim.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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